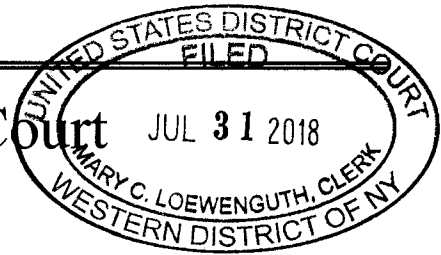


AO 91 (Rev. 02/09) Criminal Complaint

United States District Court
for the
Western District of New York



United States of America

v.

Case No. 18-MJ- **639**

JASON GIRVEN

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

Between in or about June 2018 and July 31, 2018 in the Western District of New York, the defendant violated 18 U.S.C. § 2422(b), an offense described as follows:

the defendant knowingly, using a facility or means of interstate or foreign commerce, attempted to persuade, induce, entice or coerce an individual who had not attained the age of 18 years, to engage in sexual activity for which any person can be charged with a criminal offense, in violation of Title 18, United States Code, Section 2422(b).

This criminal complaint is based on these facts:

X Continued on the attached sheet.

Please see attached affidavit

Complainant's signature

Nikki Tolias Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: July 31, 2018

Judge's signature

City and State: Rochester, New York

Hon. Marian W. Payson, U.S. Magistrate Judge
Printed name and title

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE)
CITY OF ROCHESTER)

SS:

18-mj-639

I, Nikki Tolias, being duly sworn, depose and state the following:

1. I am a Special Agent with Homeland Security Investigations (HSI) within the Department of Homeland Security, assigned to the office of the Special Agent in Charge, Buffalo New York, and have been so employed since 2006. Before that, I was employed by the former Immigration and Naturalization Service (INS) for approximately nine years. As part of my duties as a Special Agent with HSI, I investigate criminal violations relating to child exploitation and child pornography, including the illegal distribution, receipt and possession of child pornography, in violation of Title 18, United States Code, Sections 2252 and 2252A. I have received specialized training in the area of child pornography and child exploitation, and I have had the opportunity to observe and review numerous examples of child pornography, as defined in Title 18 United States Code, Section 2256.

2. I make this affidavit in support of a criminal complaint charging Jason GIRVEN, with a violation of Title 18, United States Code, Section 2422(b) (Using a facility or means of interstate commerce to knowingly persuade, induce, entice or coerce a minor to engage in a sexual activity, with the belief that the individual has not attained the age of 18 years).

3. All information contained in this affidavit is either personally known by me or has been related to me by other law enforcement agents. Since this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that Jason GIRVEN did knowingly violate Title 18, United States Code, Section 2422(b).

4. In or about June 2017, an undercover New York State Police (NYSP) Investigator (the UC) received messages on Kik Messenger¹, on an undercover Kik profile which had a profile picture of an 11-year-old female child. The messages were sent from user name "jgirv" who identified himself as an adult male with the name "Jason" from the State of Pennsylvania, who was later identified as the defendant. The UC advised the defendant that he was a 12-year-old female child from Horseheads, New York in Chemung County. The defendant acknowledged the female child's age and continued to talk with the UC. The defendant discussed meeting the female child in person but no specific meet date, time, and location was scheduled. The UC stopped communicating with the defendant on June 16, 2017 and communication ceased for a period of time.

¹ Kik Messenger is a mobile application that allows users to communicate via instant messaging, which communications are transmitted via Wi-Fi internet access or through a smartphone's data plan. Kik's servers are located in Canada.

5. On June 5, 2018, the UC received a Kik message on his undercover Kik profile from the defendant, who was using the same name, "jgivr". The defendant asked, "when is school out for you?" On June 6, 2018, the UC asked the defendant his age, sex, and location. The defendant responded, "haha we talked last summer...I just stumbled across your name when I was cleaning out my kik. 35 m Pennsylvania". The UC responded, "Oh coolio. 12 f ny". The defendant then stated, "yea you're in horseheads right?", "because we talked a fair amount last year like late spring or summer. At one point we talked about hanging out". The defendant sent a picture of himself from the shoulders up. The UC provided the defendant with a phone number and offered to text message with the defendant.

6. On June 6, 2018, the UC received text messages from the defendant using phone number 570-XXX-2315. This is the same phone number the defendant used to text message the UC in June 2017. From June 6, 2018 through July 30, 2018, the UC and the defendant text messaged back and forth with each other, discussing the 12-year-old child's school, living arrangements, and interests.

7. On June 8, 2018, the UC advised the defendant that the female child will turn the age of 13 on June 16, 2018. The defendant acknowledged this and discussed details of the female child's 13th birthday.

8. On June 11, 2018, the defendant and the UC discussed why they did not hang out in the past. The defendant stated he would still like to hang out with the 13-year-old female child. The defendant and the UC discussed the logistics of hanging out. When the

UC asked the defendant what they would do when they hung out, the defendant stated, "I just kinda go with the flow, I don't plan things well. Lol I like to play soccer and hike and outdoorsy things, but I'm fine lounging at a tv too". The defendant went on to say, "I know that a lot changes, 12yos didn't have boobs when I was 12. Lol but I don't know what the boundaries are now so I play it safe lol". The UC responded, "My boobs r super small :(lol". The defendant then stated, "lol I dunno, I haven't seen them. Honestly tho smaller is usually better. they always stay perky as you age and more than a mouthful is a waste".

9. On June 16, 2018, the defendant sent a text message stating, "happy birthday! Hope it's a good one. phone is dying".

10. On June 20, 2018, the defendant asked the UC for a picture. The UC sent the defendant a pre-approved undercover photo of a young female child. The defendant commented on the female child's breasts. The defendant then requested a picture of the female child touching her nose. The UC sent the defendant a picture of an undercover female law enforcement officer touching her nose.

11. On June 22, 2018, the defendant stated to the UC, "ohh that sounds exciting. lol I was gonna say we could maybe hang out or whatever after lunch". The defendant went on to ask multiple times if he could come visit the child that day. The UC told the defendant another time would be better.

12. On June 25, 2018, the defendant discussed sex, masturbation, and the sexual activity of girls on Kik messenger.

13. On June 25, 2018, the UC stated to the defendant, "like no offense but im kinda looking 4 a bf on here and u said im 2 young 4 u so maybe like we shouldn't talk ne more. i like u a lot but whats the point u know??" To this the defendant replied, ":(well you said we can't go anywhere because someone might see us. So I mean being a bf on here is great but can we ever do anything together" and "like if im your bf I would definitely want to kiss you. I guess we can sneak visits from time to time but what happens when you're back in school?". The UC asked, "like u wanna kiss me 4 reals or just messin w me??" The defendant responded, "I wouldn't mess with you on something like that. if you're my gf I am definitely gonna kiss you lol besides, you have a beautiful smile and I bet kiss great".

14. On June 27, 2018, the defendant discussed being on Skype video naked and sending naked pictures. The defendant asked if the female child masturbated on video in the past to which the UC stated, "no".

15. On June 28, 2018, the defendant discussed having the female child to his residence to swim in his pool. The defendant stated, "like you...in a bikini...in my pool...ill probably just sit and stare and enjoy the view haha". When the UC asked if there was anything else they would do at the pool, the defendant stated, "anything you want to do...but I'm hoping at least a kiss might be in there somewhere". The defendant also discussed skinny dipping and hiding an erection, and the size of his penis.

16. On July 5, 2018, the defendant discussed how a woman on Kik was hitting on him and wanting to “hook up”. When asked what she said to the defendant, he stated, “how she was alone in bed and needed cock and was gonna drive up here and all this stuff she was gonna do to me.” When asked if he liked what she said and why, the defendant stated, “oh I just meant that when she talked about how she was going to give me a blowjob and then have me cum on her boobs...like it was hot talk”. The defendant stated he didn’t want the child to be afraid he was going to ask for something sexually when they hung out. The UC responded saying, “no i wouldn’t a cared i just like 2 know dtuff ahead a time u onow??”. The defendant responded, “so you would have been ok if I whipped it out? Lol what do you do if you know ahead of time? research? hehe”. The UC then stated, “Lol i guess i mean if we talk bout it b4 u can tell me stuff so i know duh”. The defendant responded, “lol well like I said its not really something that is easily explained. I mean I can give the basics but its more practice”. The defendant went on to discuss oral sexual conduct with the 13-year-old female child.

17. On July 6, 2018, the defendant discussed meeting with the child in person on July 9, 2018. The defendant stated, “Nope...I think you’re very cute. I’m looking forward to seeing you in person. Kissing is allowed on first dates too :)”. The UC told the defendant the child could not meet on that day because her guardian would be home.

18. On July 10, 2018, the defendant discussed coming to hang out with the child at her residence on July 11, 2018. On July 11, 2018, the UC ignored the defendant’s text

messages and phone calls. The defendant stated, “so right now I had hope to be greeting you at the door with breakfast pizza and Reese’s...instead I sit here sad and wondering wtf I did wrong”.

19. On July 23, 2018, the UC text messaged the defendant. The defendant stated he was very upset on July 11, 2018. The UC responded stating, “Oh like I didn’t think u would really care. Most guys who txt me on Kik always talk bout sex n stuff and u only talked bout with that other girl who was txtin u. I figured u didn’t really like me anyway cuz u don’t want that u know”. The defendant responded, “lmao I’m a guy. I always want sex. Well sorta. Like we are easily aroused...but I definitely din’t want her. I ended up blocking her” and “like I definitely think about sex a lot but you seemed like such a nice sweet girl and I definitely wouldn’t be planning like just a hookup”. The UC responded, “Like u don’t want it from me either”. The defendant stated, “lol oh I thought about it a lot and definitely would like to someday... but for our first date I wasn’t gonna rip your panties off and take it ya know?”. The UC responded, “I didn’t know u even thought bout it with me u never really say a lot”. The defendant stated, “well like I said...guy...penis is in my pants...cute girl. Definitely on my mind a lot”. The UC stated, “Lmao like I nevs done it but most girls who gots a bf have so like I was surprised u didn’t wanna”. The defendant responded stating, “i didn’t want everything to be about sex. like its fun and all and I wouldn’t push you anyway if you went for my dick...but I wanted to know you as well.” and “lol well I wanna...but most girls have actually seen their bf before too so its probably more normal. I was trying to meet in person first lol”. The defendant discussed his reaction if the 13-year-old female child were to answer the door naked. The defendant went on to say, “so if you really want sex...clues

like that are pretty obvious to thick skulled guys like me.” The UC responded, “Well like i wanna learn but like only if the guy wants 2”. The defendant responded, “lol never in history has a guy ever said ‘no i don’t think I’d show you the ropes of sex”. I would just not be that bold. like people need to be direct with me”. The UC went on to say, “Well i kinda wanna learn lol just didn’t know how 2 say it :/”. The defendant responded, “hehe well you just did. I’d be thrilled to teach you. got me all perked up at the thought”.

20. On July 30, 2018, the defendant asked the UC if the 13-year-old female child wanted to hang out on July 31, 2018. The UC replied that the child would hang out with the defendant. They made arrangements for GIRVEN to travel to New York the following day at 8:00 a.m., to meet the 13-year-old minor.

21. On July 31, 2018, GIRVEN’S arrived at 1073 Sing Sing Road, Horseheads, New York expecting to meet the 13-year-old minor. Shortly before his arrival, GIRVEN texted the minor advising that he was a few minutes away and would be bringing her breakfast pizza. Upon his arrival, GIRVEN was taken into custody; law enforcement located breakfast pizza in his vehicle at the time of his arrest. GIRVEN was then interviewed by law enforcement and admitted that “jgirv” was his Kik user name and that his telephone number was 570-XXX-2315. He stated that he only intended on kissing the minor victim and would not engage in sex with her despite admitting that he participated in the text communication with the minor where they discussed engaging in sex.

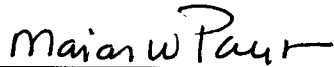
22. WHEREFORE, based on the foregoing, I respectfully submit that there is probable cause to believe that Jason GIRVEN did knowingly violate Title 18, United States Code, Section 2422(b) (Using a facility or means of interstate commerce to knowingly persuade, induce, entice or coerce a minor to engage in a sexual activity; with the belief that the individual has not attained the age of 18 years or attempted to do so).



NIKKI L. TOLIAS
Special Agent
Homeland Security Investigations

Sworn to before me this

31 day of July, 2018.



HON. MARIAN W. PAYSON
United States Magistrate Judge